IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 181 of 2005.

Date of Decision: 26-03-2007.

Parkash Chand. Petitioner

Versus

State of H.P. and others. Respondents.

Coram
Hon'ble Mr. Justice Deepak Gupta, J.
Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]?

For the petitioner : **Mr. Mr. Rajiv Sharma, Sr. Advocate with Mr. Surinder Sharma, Advocate.**

For respondent No. 1&2 : **Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Dy. Advocate General.**

For respondent No.3: **Mr. R. Maniktala, Advocate.**

Surinder Singh, J. (oral).

The petitioner in this writ petition, has mainly sought the following relief:

"i) That the impugned judgment i.e. Annexure-PQ, dated 29.7.2004 and Annexure-PP, dated 21.2.2005 may be quashed and set aside".

We have heard the learned counsel for the parties and have gone through the record.

As a matter of fact, the Department of Education to the Government of Himachal Pradesh had decided to fill up 926 posts of Voluntary Teachers

[1] Whether reporters of the Local papers are allowed to see the judgment?

in Kangra District, in view of the Scheme formulated/introduced by the State Government with a view to providing employment to the educated youth, in accordance with their academic qualifications and other things essential to become eligible. Consequently, an advertisement was issued on 10-5-1991 by the Director of Primary Education, H.P. Shimla. In response to that, the respondent Smt. Meeran Devi had applied to be appointed as Voluntary Teacher in Govt. Primary School, Chobhu falling under Baijnath Education Block. She was interviewed on 3-12-1991 along with other candidates by the Selection Committee constituted as per the Scheme but according to her, one Shri Pardhan Singh son of Shri Mast Ram was selected. Feeling aggrieved, she filed OA No. 431 of 1992 before the State Administrative Tribunal alleging that she was more meritorious and well qualified than Pradhan Singh aforesaid. After hearing the parties, the learned Tribunal found certain discrepancies in the original record of the selection proceedings, thus the selection was quashed vide order dated 22-10-1992 (Annexure-PC) and it was directed to hold interviews afresh for one post of Voluntary Teacher in Government Primary School, Chobhu (Baijnath Block) within a period of two months.

The respondent Smt. Meeran Devi was also a candidate for the post of Voluntary Teacher in Government Primary School, Simbal. She was interviewed along with other candidates including Parkash Chand petitioner herein, by the Selection Committee on 26-11-1991. This School also fell within the Primary Education Block, Baijnath. The interviews were school specific. Here again, respondent Meeran Devi could not get through, as such Parkash Chand son of Shri Bachittar Singh, was selected, against which respondent Smt. Meeran Devi had filed O.A. No. 816 of 1993, before the learned Tribunal, precisely on the ground that said Shri Parkash Chand was comparatively lower in academic as well as in the field of experience.

Thus, she was discriminated and sought setting aside the selection of said Shri Parkash Chand as Voluntary Teacher.

In fact, the learned Tribunal carried the impression that Parkash Chand petitioner herein was the respondent in O.A. No. 431 of 1992 whose selection was set aside. The relevant paras from the judgment of O.A. No. 816 of 1993 are quoted as under:

> "7. Now, before dealing with the discussion emanating from the present case, it would be necessary to refer to the order passed by this Tribunal in O.A. No. 431/92 earlier filed by the applicant in which she had challenged the appointment of Shri Parkash Chand, respondent No.3 who was appointed as Volunteer Teacher in Govt. Primary School, Chobu. The relevant portion of the order reads as under:-
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> 'There are pencil markings which indicate that Meera Devi applicant was selected firstly awarding 20 marks and subsequently changed to 18 which clearly indicates the manipulation whereby the respondent No4 Pradhan Singh, is earlier stated to be the academically poorest has been selected. Thus, we have no option but to quash the selection and appointment of respondent No.4 as Voluntary Teacher in Govt. Primary School, Chobu (Kangra)"
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> "8. Interestingly, though venue of the interviews had changed from Chobu to Simbal for the appointment of the Voluntary Teacher, but the scenario remains the same i.e winner and looser are the same. There is no doubt that the proposition of law is well settled that where there is a recommendation of Expert body, such recommendation should not be interfered with by the Court, unless a very strong case has been made out of unfairness and

partisanship as held in "Dr. Parijat De vs. Dr. Amarendra Kumar Samaddar Chaudhary and ors. (Calcutta) 2004 (3) SLR 211". Reliance has also been placed on "Uma Shankar's case reported in 1980 (2) SLR 26: 1980 (3) SCC 202 in Dr. Parijat De's case (supra)".

Thus, on the basis of this, the selection of the petitioner herein was also held to be not the result of fair play in this petition, but it was attributable to the procedure adopted by the Selection Committee. It was also held that the selection smacks of malafides, thus stood vitiated. Consequently O.A. No. 816 of 1993 was allowed and the selection proceedings appointing Shri Parkash Chand aforesaid, as Voluntary Teacher were quashed by the impugned judgment which has been assailed in this petition.

As already noticed above, on examination of the record, we have found that the parties, in OA No. 431 of 1992 and 816 of 1993 were neither the same as observed by the learned Tribunal nor the selection of Parkash Chand as Voluntary Teacher for Govt. Primary School Chobhu was called in question in OA No. 431 of 1992 aforesaid. In both these petitions, the persons selected were altogether different. The learned Tribunal had wrongly noticed the facts which culminated into the passing of the impugned judgment, which is un-sustainable. Accordingly, we set aside the impugned judgment of the Tribunal passed in OA No. 816 of 2003 and hereby remand the case to the learned Tribunal for decision afresh on merits, after hearing the parties. The parties are directed to be present before the learned Tribunal on 17-4-2007. Since the matter is quite old, therefore, it is expected that every endeavour shall be

made by the learned Tribunal to dispose of the same within six months.

CMP No. 336 of 2005.

No order in view of the disposal of the writ petition.

(Deepak Gupta), J.

(Surinder Singh), J.

March 26, 2007.
(BM)